



STATE OF MAINE
COMMISSION ON GOVERNMENTAL ETHICS
AND ELECTION PRACTICES
135 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0135

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November 29th, 2000

Minutes of the November 29th, 2000, meeting of the Commission on Governmental Ethics and Election Practices held in the Commission (PUC) Hearing Room, 242 State Street, Augusta, Maine.

Present: Chairman: Peter B. Webster; Members: Hon. Michael Carpenter, Hon. Virginia Constantine, Dr. Linda W. Cronkhite, and Hon. Harriet P. Henry; Executive Director William C. Hain, III; Counsel Phyllis Gardiner, Esq.; and Commission Assistant Diana True.

Chair Webster called the meeting to order at 1:31 p.m.

The Commission considered items on the published agenda as follows:

Agenda Item #3A: Mr. Robert B. Coolidge and Dr. R. Davis Hart Complaint Against Representative Edward J. Povich

Mr. Coolidge and Dr. Hart by letter dated October 10th, 2000 reported a possible violation of the Maine Code of Fair Campaign Practices resulting from alleged misrepresentation by Representative Povich of his voting record on LD 1268. Mr. Coolidge appeared and made a personal presentation to the Commission. After discussion by Commission Members and based on the constitutional prohibition against limitations on free speech, particularly in the context of an election campaign, Ms. Cronkhite moved, Ms. Constantine seconded, and Members voted unanimously to take no further action.

Agenda Item #3B: Ms. Clare Hudson Payne Complaint Against Mr. John E. Burke II

Ms. Payne by letter dated October 30th, 2000 reported a possible violation of the Maine Code of Fair Campaign Practices resulting from alleged misrepresentation by Mr. Burke of his academic and professional credentials. Ms. Payne appeared and made a personal presentation to the Commission, acknowledging the constitutional protections, but noting her opinion that the line was crossed in this case because the statements made by Mr. Burke were not factually correct. After discussion by Commission Members and based on the same considerations as the previous matter, Ms. Constantine moved, Judge Henry seconded, and Members voted unanimously to take no further action.



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Agenda Item #3C: Mr. John E. Burke II Complaint Against Ms. Mary Ellen Ledwin

Mr. Burke, by letter dated November 10th, 2000 (received November 16th, 2000), filed a complaint against Ms. Ledwin for “unacceptable, inappropriate, and highly irregular conduct” in violation of several conditions of the Maine Code of Fair Campaign Practices. After discussion by Commission Members and based upon the constitutional considerations as the previous matters, Mr. Carpenter moved, Ms. Cronkhite seconded, and members voted unanimously to take no further action.

Agenda Item #4A: Senator Betty Lou Mitchell

Senator Mitchell accepted five (5) contributions that (combined with previous contributions from the same sources) exceeded the permissible contribution limit of \$250 per candidate per election from the same source by an amount totaling \$850.00. Mr. Hain explained the particulars of the impermissible excess contributions following which Judge Henry moved, Ms. Constantine seconded, and Members voted unanimously to take no further action since excess contributions had been returned immediately upon notification and to remain consistent with Commission precedent in this first election cycle under the drastically reduced contribution limitations, but directed Mr. Hain to communicate the Commission’s admonishment against future violations.

Agenda Item #4C: Thomas J. Harder Complaint Against Alton E. Morgan

By letter dated October 29th, 2000, Mr. Harder filed a complaint alleging violations by Mr. Morgan of the attribution, authorization, and reporting requirements of the Campaign Finance Laws. Mr. Harder, Representative Kevin J. Glynn, Mr. Birger Johnson, Attorney Kurt W. Adams, and Attorney Scott Lynch addressed the Commission. After discussion of the facts and issues, the Commission concluded that Mr. Birger Johnson had not included the attribution statement required by the Campaign Finance Laws in the political statement that he paid to have published in support of Mr. Morgan. Mr. Carpenter moved that no further action be taken. The motion failed for lack of a second. Thereafter, Ms. Constantine moved, Ms. Cronkhite seconded, and Members voted unanimously to assess a \$50 civil forfeiture penalty against Mr. Birger Johnson for failure to properly attribute his political statement in support of Mr. Morgan in violation of 21A M.R.S.A. § 1014.

Agenda Item #4D: Mr. Bruce Gerry Complaint Against Ms. Deborah Simpson

By letter dated November 1st, 2000, Mr. Gerry questioned the completeness of the expenditures reported by Ms. Simpson for the printing and mailing of campaign literature and the conduct of polling for campaign purposes. Following Mr. Hain’s summary of the factual background of this matter, Judge Henry moved, Mr. Carpenter seconded, and Members unanimously voted to take no further action.



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Agenda Item #4E: Hon. Elizabeth Watson Complaint Against Ms. Gabrielle J. Carbonneau

By letter dated November 2nd, 2000, Representative Watson filed a request for the Commission to examine the alleged failure by Ms. Carbonneau to report expenditures made during the filing period for the campaign finance report due on November 1st, 2000. Attorney Kurt W. Adams appeared on behalf of the Maine Democratic Party and addressed the definition of expenditure as including a contract, promise or agreement, expressed or implied, whether or not legally enforceable, to make any expenditure and requested the Commission to clarify when such obligations should be reported as expenditures. After discussion of the difficulty of precisely determining when a commitment to make an expenditure has been made, Mr. Carpenter moved, Ms. Cronkhite seconded, and Members unanimously voted to take no further action.

Mr. Carpenter recused himself from participation in Agenda Items #4F and #4G because of a prior association with Mr. Donald H. Gean.

Agenda Item #4H: Mr. Daniel Billings and Ms. Pat Dutille Complaints Against Sagadahoc County Democratic Committee and Ms. Deborah J. Hutton

By letter dated November 5th, 2000, and tele-fax received November 5th, 2000, Mr. Billings and Ms. Dutille, respectively, filed complaints with the Commission questioning the legality of a letter sent by Representative David Shiah as a coordinated contribution to the Hutton campaign paid for by the Sagadahoc County Democratic Committee. Mr. Hain explained the factual background of the complaints and reviewed the distinction between in-kind contributions and independent expenditures. Attorney Kurt W. Adams addressed the Commission regarding the so-called "slate card" exception to the definition of expenditure and questioned the limitations that should be applied to that exception. Mr. Hain explained that the legislative intent of the recent amendments to the definitions of "contribution" and "expenditure" were intended to promote party-building activities on behalf of three (3) or more candidates and that the issue becomes what the Legislature meant by the term "other printed listing of 3 or more candidates" in the exceptions to the definitions of "contribution" and "expenditure." After discussion of the matter, Ms. Constantine moved, Ms. Cronkhite seconded, and Members voted 4-0 (Mr. Carpenter not voting) to take no further action.

Agenda Item #4I: Mr. Thomas Brown Complaint Against House Democratic Campaign Committee

By letter dated November 7th, 2000, Mr. Thomas Brown questioned the adequacy of the authorization and attribution statements on campaign literature paid for and authorized by the House Democratic Campaign Committee in House District 27, as well as the reporting of such advertisement expenditure as an in-kind expenditure by Mr. Alton Morgan. Representative Kevin J. Glynn, Attorney Kurt W. Adams, and Mr. Thomas J. Harder addressed the Commission at various times throughout the protracted discussion of the distinction between "express advocacy" and "issue advocacy" as those terms are both legally defined and factually understood to mean to the general public. Commission Counsel Gardiner addressed the Commission and



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summarized her memorandum to the Commission regarding the definition and application of the term “express advocacy” as applied by the courts and relevant to the Commission’s application of its definition of “express advocacy” as required by precedent of the First Circuit Court of Appeals. Following full discussion of the issue, Judge Henry moved that the communication at issue be considered “express advocacy” and, in the absence of an attribution statement, to assess a \$100 penalty. Judge Henry stated her firm opinion that the Commission should determine that the political communication at issue is “express advocacy” and be willing to litigate that issue, even to the extent of appealing to the Supreme Court, if necessary, in support of that position. The motion failed for lack of a second. Mr. Carpenter then moved, Ms. Constantine seconded and, after a request for clarification by Ms. Cronkhite, Members voted 3-2 (Chair Webster and Judge Henry opposed) to take no further action.

Agenda Item #6D: House Democratic Campaign Committee Complaint Against Committee to Reelect Stavros J. Mendros

By memorandum received November 5th, 2000, Mr. Ian Catlett, on behalf of the House Democratic Campaign Committee, filed a formal complaint against Representative Mendros for the failure by the Committee to Reelect Stavros J. Mendros to report independent expenditures it had made that may have triggered the release of matching funds to the benefit of Representative Lillian O’Brien. Mr. Rick Pelletier and Attorney Kurt W. Adams on behalf of the House Democratic Campaign Committee and Attorney Scott Lynch on behalf of Representative Mendros addressed the Commission. Attorney Lynch represented that Mr. Mendros’ campaign had expended less than \$16 on approximately 70 items mailed in House District #89. In response to Attorney Adams’ inquiry regarding the total amount expended for all similar mailings in all districts, Attorney Lynch indicated that he did not have that information. Following a discussion among Members regarding the application of the independent expenditure reporting requirements and the application of the rules regarding “express advocacy” to the facts at hand, Mr. Carpenter moved, Ms. Cronkhite seconded, and Members voted 4-1 (Ms. Constantine opposed) to take no further action.

Agenda Item #4J: Mr. Thomas Brown Complaint Against Mr. Alton Morgan and Ms. Lynn Bromley

By letter dated November 7th, 2000, Mr. Brown questioned the adequacy of the authorization and attribution statements on separate campaign literature paid for and authorized by the “Committee to Elect Al Morgan” and “Lynn Bromley for State Senate.” Following Mr. Hain’s review of the facts and Commission discussion of the applicable statutory provisions, Judge Henry moved, Mr. Carpenter seconded, and Members voted unanimously to take no further action regarding the complaint against Mr. Morgan. Ms. Constantine then moved, Mr. Carpenter seconded, and Members voted unanimously to take no further action regarding the complaint against Ms. Bromley.



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Agenda Item #4K: Ruth McCleery Watson Complaint Against Ms. Lynn Bromley

By e-mail dated November 5th, 2000, Ms. Watson questioned the source of an additional \$7,000 that her opponent, Ms. Bromley, intended to spend on the purchase of radio time with the Portland Radio Group, which expenditure was subsequently canceled. Ms. Tamara Pogue appeared on behalf of Ms. Bromley and explained to the Commission that Ms. Bromley expected to receive matching fund revenues from what she believed to have been an independent expenditure in support of Ms. Watson. However, that money was not received as a result of which she had to cancel the order for anticipated radio time. Based upon that explanation, Ms. Cronkhite moved, Judge Henry seconded, and Members voted unanimously to take no further action.

Agenda Item #5: Mr. William J. Donovan

Mr. Donovan reported personal loans to his campaign on June 6th and 8th, 2000 totaling \$196.18 that were repaid on June 21st, 2000 from his general election distribution. Mr. Donovan's letter of October 26th, 2000 explains the circumstances that prompted those loans. Mr. Donovan was unopposed in the primary election and he knew he would receive a MCEA distribution for the general election. His campaign received no increase in spending capability from the erroneous "advance" of funds. He reported having made the loans to alleviate a cash flow situation. Attorney Kurt W. Adams addressed the Commission and expressed his belief that this situation is serious and warrants more than a mere admonishment against future occurrences. However, after full discussion by the Commission, Ms. Cronkhite moved, Ms. Constantine seconded, and Members voted unanimously to find a technical violation, to assess no monetary penalty, but to admonish Mr. Donovan against future violations.

Agenda Item #6A: Maine Democratic Party Complaint Regarding Maine State Employees Association - PAGE

By letter dated October 30th, 2000, Kurt W. Adams, Esq., on behalf of the Maine Democratic Party, filed a complaint and request for relief challenging the payment of matching funds to two (2) Maine Clean Election Act candidates as a result of independent expenditures reported to the Commission by the Maine State Employees Association - PAGE in support of two (2) Maine Clean Election Act Candidates. The Commission considered the issue whether the communications that were reported as independent expenditures constituted "express advocacy" communications that were required to have been reported and that resulted in the release of "matching funds" to opposing candidates. Attorney Kurt W. Adams on behalf of the Maine Democratic Party and Attorney Timothy Belcher on behalf of the Maine State Employees Association addressed the Commission. Both suggested and several Commission Members agreed that some mechanism needs to be established to make determinations of what expenditures made in the weeks before an election are reportable independent expenditures that may trigger payment of matching funds to MCEA candidates. However, based upon the circumstances in this case, Mr. Carpenter moved, Ms. Constantine seconded, and Members voted unanimously to dismiss this matter as moot.



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Agenda Item #6B: Ms. Ruth McCleery Watson Complaint Against Senate 21 PAC

By letter dated November 3rd, 2000, Ms. Watson filed a complaint against the Senate 21 PAC questioning whether certain campaign communications should have been reported as independent expenditures in support of Ms. Lynn Bromley, Ms. Watson's opponent that may have triggered the release of matching funds for Ms. Watson. After discussion by the Commission of the facts in this matter and the application of the rules regarding "express advocacy" as they apply to reporting independent expenditures, Mr. Carpenter moved, Ms. Cronkhite seconded, and Members voted 4-1 (Judge Henry opposed) to take no further action.

Agenda Item #1: Ratification of Minutes

Mr. Carpenter moved, Ms. Constantine seconded and Members voted unanimously to ratify the minutes of the October 10th, 2000 meeting as presented.

Agenda Item #2: Thomas B. Federle, Lobbyist for Multistate Associates, Inc., Late Monthly Disclosure Penalty

Judge Henry moved, Mr. Carpenter seconded, and Members voted unanimously to assess a \$50.00 penalty based upon the circumstances presented.

Commission Members discussed the date for the next scheduled meeting. The next meeting normally would be held on the second Wednesday of the month, December 13th, but given the anticipated relatively light agenda expected, Members authorized Chair Webster to confer with Director Hain to determine whether that meeting should be cancelled and the next meeting held on January 10th, 2001.

There being no further business, on motion and unanimous vote, the Commission adjourned at 5:15 p.m.

Respectfully submitted,

William C. Hain, III
Executive Director